



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2014 REGULAR SESSION

HOUSE BILL NO. 264

AS ENACTED

MONDAY, MARCH 31, 2014

RECEIVED AND FILED
DATE April 10, 2014
1:36pm
ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

1 AN ACT relating to public advocacy.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔ Section 1. KRS 31.100 is amended to read as follows:

4 The following terms and standards shall apply, subject to further definition and regulation
5 by the Department of Public Advocacy: [-]

6 (1) "Defending attorney" means any attorney who is representing a needy or
7 indigent person;

8 (2) "Department" means the Department of Public Advocacy;

9 (3) "Detain" means to have in custody or otherwise deprive of freedom of action;

10 (4) [(2)] "Expenses," when used with reference to representation under this chapter,
11 includes the expenses of investigation, other preparation, and trial, together with the
12 expenses of any appeal;

13 (5) [(3)] "Needy person" or "indigent person" means:

14 (a) A person eighteen (18) years of age or older or an emancipated minor under
15 the age of eighteen (18) who, at the time his or her need is determined, is
16 unable to provide for the payment of an attorney and all other necessary
17 expenses of representation;

18 (b) A minor, under the age of eighteen (18), who is a party defendant in an action
19 of being an habitual runaway from his or her parent or person exercising
20 control or supervision of the child brought under KRS 630.020(1) or of being
21 beyond the control of parents brought under KRS 630.020(2), and at the time
22 his or her need is determined is unable to provide for the payment of an
23 attorney and all other necessary expenses of representation;

24 (c) An unemancipated minor, under the age of eighteen (18), who allegedly has
25 committed an offense as described in KRS 610.010(1), or who allegedly is
26 beyond the control of the school as described in KRS 610.010(2)(a), or who
27 allegedly is an habitual truant from school as described in KRS 610.010(2)(b),

1 or who allegedly is an habitual runaway as described in KRS 610.010(2)(c),
 2 whose custodial parent or guardian at the time the need of the minor is
 3 determined is unable to provide for the payment of an attorney and all other
 4 necessary expenses of representation, and who cannot personally so provide;
 5 or

6 (d) An unemancipated minor, under the age of eighteen (18), alleged to have
 7 committed an offense as described in KRS 610.010(1) or (2)(a), (b), or (c),
 8 whose custodial parent or guardian at the time the need of the minor is
 9 determined has interests adverse to the child relevant to the charged offenses
 10 and who is able to provide for the payment of an attorney and all other
 11 necessary expenses of representation, when such representation is not
 12 provided or is not consented to by the unemancipated minor;

13 (6) "Non-lawyer assistants" shall:

14 (a) Have the same meaning contemplated by SCR 3.130(5.3) "Responsibilities
 15 regarding non-lawyer assistants"; and

16 (b) Be subject to the Rules of Professional Conduct and the Rules of Evidence
 17 as they relate to client confidentiality, attorney-client communications, and
 18 attorney-client privilege.

19 All non-lawyer assistants hired by the department who are independently licensed
 20 or certified shall practice under the attorney-client privilege, irrespective of other
 21 obligations or duties arising with their independent licenses or certifications.
 22 Nothing in this subsection shall authorize the disclosure of confidential
 23 information to non-lawyer assistants within the department who are not
 24 performing duties at the direction of an attorney;

25 (7) "Plan" means an agreement between the Department of Public Advocacy and
 26 attorneys for the representation of indigent persons who are entitled to
 27 representation under KRS Chapter 31 and who, by reason of conflict or

1 otherwise, cannot be represented by the department; and

2 ~~(8)~~~~[(4)]~~ "Serious crime" includes:

- 3 (a) A felony;
- 4 (b) A misdemeanor or offense any penalty for which includes the possibility of
- 5 confinement;
- 6 (c) Any legal action which could result in the detainment of a defendant; and
- 7 (d) An act that, but for the age of the person involved, would otherwise be a
- 8 serious crime.

9 ➔Section 2. KRS 31.030 is amended to read as follows:

10 The authority and duties of the Department of Public Advocacy shall include but are not
11 limited to:

- 12 (1) Administering the statewide public advocacy system created by this chapter or by
- 13 any other appropriate legislation or court decision;
- 14 (2) Providing technical aid to local counsel representing indigent persons~~[indigents]~~;
- 15 (3) Assisting local counsel on appeals or taking appeals for local counsel, in the same
- 16 manner as such appeals for the Commonwealth are presently handled by the
- 17 Attorney General;
- 18 (4) Developing and promulgating standards and administrative regulations, rules, and
- 19 procedures for administration of the defense of indigent defendants in criminal
- 20 cases that~~[which]~~ the public advocate, statutes, or the courts determine are subject
- 21 to public assistance;
- 22 (5) Determining necessary personnel for the department and appointing staff attorneys,
- 23 who shall be "assistant public advocates," and non-lawyer assistants~~[secretarial,~~
- 24 ~~clerical, and other personnel]~~ within the merit system, subject to available funding
- 25 and employee allotments;
- 26 (6) Maintaining and exercising control over the department's information technology
- 27 system, and working with the Commonwealth Office of Technology to ensure that

- 1 the department's information technology is in conformity with the requirements of
 2 state government;
- 3 (7) Reviewing and approving local plans for providing counsel for indigent
 4 persons[indigents];
- 5 (8) Conducting research into, and developing and implementing methods of, improving
 6 the operation of the criminal justice system with regard to indigent defendants and
 7 other defendants in criminal actions, including participation in groups,
 8 organizations, and projects dedicated to improving representation of defendants
 9 in criminal actions in particular, or the interests of indigent or impoverished
 10 persons in general;
- 11 (9) Issuing[~~such~~] rules, promulgating administrative regulations, and establishing
 12 standards as may be reasonably necessary to carry out the provisions of this chapter,
 13 the decisions of the United States Supreme Court, the decisions of the Kentucky
 14 Supreme Court, Court of Appeals, and other applicable court decisions or statutes;
- 15 (10) Being authorized to pursue legal, administrative, and other appropriate remedies to
 16 ensure the protection of the rights of persons with disabilities;
- 17 (11) Being authorized to purchase liability insurance for the protection of all full-time
 18 public advocates, deputy public advocates, and assistant public advocates to protect
 19 them from liability for malpractice arising in the course or scope of employment
 20 and for the protection of attorneys with whom the Department of Public Advocacy
 21 contracts to protect them from liability for malpractice arising in the course or scope
 22 of the contract;
- 23 (12) Being authorized to seek and apply for and solicit funds for the operation of the
 24 defense of[~~the~~] indigent persons[~~;~~] or protection of the persons with disabilities
 25 programs from any source, public or private, and to receive donations, grants,
 26 awards, and similar funds from any legal source. Those funds shall be placed in a
 27 special account for the Department of Public Advocacy and those funds shall not

1 lapse;

2 (13) Being authorized to assign ~~an~~^[a substitute] attorney, including a conflict attorney
 3 under a plan, for good cause, at any stage of representation, including trial, appeal,
 4 or other post-conviction or post-disposition proceeding, including discharge
 5 revocation hearings, preliminary parole revocation hearings, and conditional
 6 discharge revocation hearings, regardless of whether the hearings are conducted
 7 by constitutional judges or executive branch administrative law judges; ~~[- The~~
 8 substitute attorney shall have the same functions with respect to the needy person as
 9 the attorney for whom he or she is substituted; and]

10 (14) Filing with the Legislative Research Commission an annual report, by September
 11 30 of each year, setting forth the total number of cases assigned to the
 12 department, the average number of cases per department attorney, all funding
 13 available to the department, the average amount of state funds expended per
 14 assigned case, and any other information requested by the Legislative Research
 15 Commission or that the Public Advocate finds necessary to inform the General
 16 Assembly, the judicial or executive branches, or the public of the activities
 17 conducted by the department during the previous fiscal year; and

18 (15) Do~~[- such]~~ other activities~~[- things]~~ and institute~~[- such]~~ other programs as~~[- are~~
 19 reasonably] necessary to carry out the provisions of this chapter, or those decisions
 20 or statutes which are the subject of~~[- subsection (9) of]~~ this section.

21 ➔ Section 3. KRS 31.110 is amended to read as follows:

22 (1) A needy person who is being detained by a law enforcement officer, on suspicion of
 23 having committed, or who is under formal charge of having committed, or is being
 24 detained under a conviction of, a serious crime, or who is accused of having
 25 committed a public or status offense or who has been committed to the Department
 26 of Juvenile Justice or Cabinet for Health and Family Services for having committed
 27 a public or status offense as those are defined by KRS 610.010(1), 610.010(2)(a),

1 (b), (c), or 630.020(2) is entitled:

2 (a) To be represented by an attorney to the same extent as a person having his or
3 her own counsel is so entitled; and

4 (b) Except as provided in subsection (2)(c) of this section, to be provided with
5 the necessary services and facilities of representation, including investigation
6 and other preparation. The courts in which the defendant is tried shall waive
7 all costs.

8 (2) A needy person who is entitled to be represented by an attorney under subsection
9 (1) of this section is entitled:

10 (a) To be counseled and defended at all stages of the matter beginning with the
11 earliest time when a person providing his or her own counsel would be
12 entitled to be represented by an attorney and including revocation of probation
13 or parole;

14 (b) To be represented in any appeal; and

15 (c) To be represented in any other post-conviction, or, if a minor under the age of
16 eighteen (18), post-disposition proceeding, including any appeal from a post-
17 conviction or post-disposition action~~[that the attorney and the needy person~~
18 ~~considers appropriate].~~ However, if the department~~[counsel appointed in such~~
19 ~~post-conviction, or, if a minor under the age of eighteen (18), post-disposition~~
20 ~~remedy,]~~ and~~[with]~~ the court of competent jurisdiction~~[involved,]~~ determines
21 that it is not a proceeding that a reasonable person with adequate means would
22 be willing to bring at his or her own expense, there shall be no further right to
23 be represented by counsel under the provisions of this chapter.

24 In cases involving a minor under the age of eighteen (18), prior to making a
25 determination on whether or not a post-disposition action is a proceeding
26 that a reasonable person with adequate means would be willing to bring at
27 his or her own expense, an attorney with the department shall be granted

access to the court file of the minor:

1. Without the requirement of a formal court order in which the attorney has provided a release signed by the minor or the minor's legal guardian authorizing the use of the records; and
2. Notwithstanding any other statute prohibiting the disclosure of a juvenile court file.

(3) A needy person's right to a benefit under subsection (1) or (2) of this section is not affected by his or her having provided a similar benefit at his or her own expense, or by he or she having waived it, at an earlier stage.

(4) A person, whether a needy person or not, who is a minor under the age of eighteen (18) and who is in the custody of the Department of Juvenile Justice and is residing in a residential treatment center or detention center is entitled to be represented on a legal claim related to his or her confinement involving violations of federal or state statutory rights or constitutional rights. Prior to representation, an attorney with the department shall be granted access to the court file of the minor and residential treatment center or detention center records pertaining to the juvenile:

(a) Without entering an appearance as an attorney of record; and

(b) Notwithstanding any other statute prohibiting the disclosure of a juvenile's record, including KRS 15A.0651, 610.320, 610.340, or 610.345.

→ Section 4. KRS 31.120 is amended to read as follows:

(1) (a) The determination of whether a person covered by KRS 31.110 is a needy person shall be deferred no later than his or her first appearance in court or in a suit for payment or reimbursement under KRS 31.211, whichever occurs earlier.

(b) ~~{Thereafter, }~~The court of competent jurisdiction in which the case is pending~~{concerned}~~ shall then determine, with respect to each step in the proceedings, whether he or she is a needy person. However, nothing~~[herein]~~

1 shall prevent appointment of counsel at the earliest necessary proceeding at
 2 which the person is entitled to counsel, upon declaration by the person that he
 3 or she is needy under the terms of this chapter. In that event, the person
 4 involved shall be required to make reimbursement for the representation[
 5 involved] if he or she later is determined not a needy person under the terms
 6 of this chapter.

7 (c) A person who, after conviction, is sentenced while being represented by a
 8 public defender shall continue to be presumed a needy person, and the
 9 court, at the time of sentencing, shall enter an Order In Forma Pauperis for
 10 purposes of appeal without having to show further proof of continued
 11 indigency, unless the court finds good cause after a hearing to determine
 12 that the defendant should not continue to be considered an indigent person.

13 (2) In determining whether a person is a needy person and in determining the extent of
 14 his or her[—,] and, in the case of an unemancipated minor under KRS
 15 31.100(5)[(3)](c), his or her custodial parents' or guardians'[parent's or guardian's]
 16 inability to pay, the court concerned shall consider such factors as:

- 17 (a) Income;
- 18 (b) Source of income;
- 19 (c) Property owned;
- 20 (d) Number of motor vehicles owned and in working condition;
- 21 (e) Other assets;
- 22 (f) Outstanding obligations;
- 23 (g) The number and ages of his or her dependents;
- 24 (h) The poverty level income guidelines compiled and published by the United
- 25 States Department of Labor;
- 26 (i) Complexity of the case;
- 27 (j) Amount a private attorney charges for similar services;

- 1 (k) Amount of time an attorney would reasonably spend on the case; and
- 2 (l) Payment of money bail, other than a property bond of another, whether
- 3 deposited by the person or another, to secure the person's release from
- 4 confinement on the present charge of which he or she stands accused or
- 5 convicted; and

6 (m) Any other circumstances presented to the court relevant to financial status.

7 Release on bail, or any other method of release provided in KRS Chapter 431, shall

8 not necessarily prevent him or her from being a needy person. In each case, the

9 person~~[,]~~ and, if an unemancipated minor under KRS 31.100~~(5)~~~~(3)~~(c) and (d), his

10 or her custodial parent or guardian, subject to the penalties for perjury, shall certify

11 by affidavit of indigency which shall be compiled by the pretrial release officer, as

12 provided under KRS Chapter 431 and Supreme Court Rules or orders promulgated

13 pursuant thereto, the material factors relating to his or her ability to pay in the form

14 the Supreme Court prescribes.

- 15 (3) The affidavit of indigency, to be subscribed and sworn to by the person~~[,]~~ and, in
- 16 the case of an unemancipated minor under KRS 31.100~~(5)~~~~(3)~~(c), by his or her
- 17 custodial parent or guardian, shall be as set out herein and contain, at a minimum,
- 18 the following information:

19 "Commonwealth of Kentucky

20 County of.....

21 Affiant....., being first duly sworn says that he or she is not now represented

22 by private counsel and that he or she does not have the money or assets out of which to

23 employ one; that he or she is indigent and requests the court to appoint counsel.

24 Affiant states that he or she is presently (fill in the blank with one (1) of the following:

25 unemployed, employed full-time, employed part-time, or employed on a seasonal

26 basis).....

27 Affiant states that his or her weekly income is; and that he or she receives

1 (circle any of the following which apply and fill in the blank if necessary)

2 Welfare

3 Food stamps

4 Social Security

5 Workers' compensation

6 Unemployment

7 Retirement disability

8 Other.....

9 Affiant states that he or she owns the following property:

10 Description	Value
11
12
13;

14 Affiant states that he or she has the following dependents:

15 Name	Age	Relationship
16
17
18;

19 Affiant states that he or she has the following obligations:

20 To whom owed	Amount owing
21
22
23
24

25 Affiant understands and has been advised that he or she may be held responsible for the
 26 payment of part of the cost of legal representation. Affiant also understands that the cost
 27 of payment for legal representation will be determined by the judge after considering

1 affiant's financial condition, what private attorneys charge for similar services, how
2 complicated the affiant's case is, and the amount of time affiant's attorney spends on
3 affiant's case.

4 Signature of affiant

5 Subscribed and sworn to before me this , day of , 20.....

6

7 Signature and title of officer

8 administering the oath

9 Perjury Warning: Affiant understands that any person knowingly making false statements
10 in the above affidavit shall be subject to the penalties for perjury under KRS Chapter 523,
11 the maximum penalty for which is five (5) years' imprisonment. Affiant declares under
12 penalty of perjury that he or she has read the above affidavit and that it is true and
13 complete to the best of his or her knowledge."

14 ➔Section 5. KRS 31.185 is amended to read as follows:

15 (1) Any defending attorney operating under the provisions of this chapter is entitled to
16 use the same state facilities for the evaluation of evidence as are available to the
17 attorney representing the Commonwealth. If he or she considers their use
18 impractical, the court of competent jurisdiction in which the case is
19 pending~~[concerned]~~ may authorize the use of private facilities to be paid for on
20 court order from the special account of the Finance and Administration Cabinet.

21 (2) The defending attorney may request to be heard ex parte and on the record with
22 regard to using private facilities under subsection (1) of this section. If the
23 defending attorney so requests, the court shall conduct the hearing ex parte and on
24 the record.

25 (3) Any direct expense, including the cost of a transcript or bystander's bill of
26 exceptions or other substitute for a transcript that is necessarily incurred in
27 representing a needy person under this chapter, are charges~~[is a charge]~~ against the

1 county, urban-county government, charter county government, unified local
 2 government, or consolidated local government on behalf of which the service is
 3 performed and shall be paid from the special account established in subsection (4)
 4 of this section and in accordance with procedures provided in subsection (5) of this
 5 section. However, ~~such~~ a charge under this subsection shall not exceed the
 6 established rate charged by the Commonwealth and its agencies.

7 (4) The consolidated local government, charter county government, unified local
 8 government, fiscal court of each county, or legislative body of an urban-county
 9 government shall annually appropriate twelve and a half cents (\$0.125) per capita of
 10 the population of the county, as determined by the Council of Local Governments'
 11 most recent population statistics, to a special account to be administered by the
 12 Finance and Administration Cabinet to pay court orders entered against counties
 13 pursuant to subsection (1) or (3) of this section. The funds in this account shall not
 14 lapse and shall remain in the special account.

15 (5) The Finance and Administration Cabinet shall pay all court orders entered pursuant
 16 to subsection (1) or (3) of this section from the special account until the funds in the
 17 account are depleted. If in any given year the special account, including any funds
 18 from prior years, is depleted and court orders entered against counties pursuant to
 19 subsection (1) or (3) of this section for that year or any prior year remain unpaid, the
 20 Finance and Administration Cabinet shall pay those orders from the Treasury in the
 21 same manner in which judgments against the Commonwealth and its agencies are
 22 paid.

23 (6) Expenses incurred in the representation of needy persons confined in a state
 24 correctional institution shall be paid from the special account established in
 25 subsection (4) of this section and in accordance with the procedures provided in
 26 subsection (5) of this section.

27 (7) Only court orders entered after July 15, 1994, shall be payable from the special

account administered by the Finance and Administration Cabinet or from the Treasury as provided in subsections (4) and (5) of this section.

➔Section 6. KRS 31.219 is amended to read as follows:

(1) It shall be the duty of the attorney representing a client at trial under any public advocacy plan to file a notice of ~~[perfect an]~~ appeal if his or her client requests an appeal.

(2) After the attorney has filed a notice of appeal as required by the Rules of Criminal Procedure, he or she shall forward to the Department of Public Advocacy a copy of the final judgment, the notice of appeal, a statement of any errors committed in the trial of the case which should be raised on appeal, and a designation of that part of the record that is essential to the appeal.

~~(3) [No attorney participating in any public advocacy plan shall be compensated for his services until he has perfected an appeal for a client who requests an appeal and has filed the information required in subsection (2) of this section.]~~

~~(4) [~~Any public advocacy attorney who is representing a client on appeal who after a conscientious examination of said appeal believes the appeal to be wholly frivolous after careful examinations of the record may request the court to which the appeal has been taken for permission to withdraw from the case. The attorney must file with that request a brief which sets forth any arguments which might possibly be raised on appeal. A copy of the request for permission to withdraw and the brief must be served upon the client in sufficient time so that the client may raise any argument he or she chooses to raise.

➔Section 7. KRS 31.220 is amended to read as follows:

This chapter applies only to representation in the courts of this state, except that it does not prohibit a defending attorney from representing a needy person in a federal court of the United States, if:

(1) The matter involves a challenge to the validity, timing, or method of

1 implementation of a judgment of a Kentucky state court in a criminal case~~[arises~~
 2 ~~out of or is related to an action pending or recently pending in a court of criminal~~
 3 ~~jurisdiction of the state];~~~~[or]~~

4 (2) The matter relates to the fact, duration, or conditions of confinement for a
 5 juvenile offender represented under subsection (5) of Section 1 of this Act; or

6 (3) Representation is under a plan of the United States District Court as required by the
 7 Criminal Justice Act of 1964~~[(18 U.S.C. 3006A)]~~.

8 ➔Section 8. KRS 31.211 is amended to read as follows:

9 (1) At arraignment, the court shall conduct a nonadversarial hearing to determine
 10 whether a person who has requested a public defender is able to pay a partial fee for
 11 legal representation, the other necessary services and facilities of representation, and
 12 court costs. The court shall order payment in an amount determined by the court and
 13 may order that the payment be made in a lump sum or by installment payments to
 14 recover money for representation provided under this chapter. This partial fee
 15 determination shall be made at each stage of the proceedings.

16 (2) If the partial fee, or any portion thereof, is not paid by the due date, the court's order
 17 is a civil judgment subject to collection under Civil Rule 69.03 and KRS Chapter
 18 426.

19 (3) All moneys received by the public advocate from indigent defendants pursuant to
 20 subsection (1) of this section shall be credited to the public advocate fund of the
 21 county in which the trial is held if the county has a plan pursuant to KRS 31.060 or
 22 31.065(1) which has been approved by the public advocate pursuant to KRS 31.050.
 23 Moneys credited to a county public advocate fund may be used only to support the
 24 public advocate program of that county.

25 (4) All moneys collected by the public advocate from indigent defendants pursuant to
 26 subsection (1) of this section in counties with a local public advocacy system
 27 established by the public advocate pursuant to KRS 31.065(2) shall be credited to

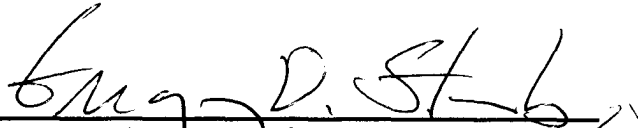
1 the Department of Public Advocacy special trust and agency account to be used to
2 support the state public advocacy system.

3 (5) If a person receives legal assistance or other benefit under this chapter to which he
4 or she is not entitled or if a person receives legal assistance under this chapter and is
5 financially able to pay for representation on the date the suit is brought, the public
6 advocate, on behalf of the Commonwealth, shall recover, where practical, payment
7 or reimbursement, as the case may be, from the person who received the legal
8 assistance or his or her estate. Suit shall be brought within five (5) years after the
9 date on which the aid was received.


10 (6) Any attorney participating in a public advocacy plan shall forward all information
11 which he or she may have which indicates that payment or reimbursement may be
12 obtained pursuant to subsection (5) of this section.

13 (7) The duty of recovery contemplated by subsection (5) of this section shall extend
14 against persons who were the custodial parents or guardians of unemancipated
15 minors at the time these minors were deemed needy as defined in KRS
16 31.100~~(5)~~~~(3)~~(c) or (d).


17 (8) All moneys collected under this section shall be placed in a special trust and agency
18 account for the Department of Public Advocacy, and the funds shall not lapse.



Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 